



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 613**

**IN THE MATTER
OF
MICHAEL A. CALIRI**

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Michael A. Caliri pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 19, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A by Caliri. The Commission has concluded the inquiry and, on August 23, 2000, found reasonable cause to believe that Caliri violated G.L. c. 268A.

The Commission and Caliri now agree to the following findings of fact and conclusions of law:

1. Caliri is the director of maintenance and custodial services ("maintenance director") for the Randolph public schools ("School Department"). Caliri was appointed to this full-time, salaried position by the Randolph superintendent of schools ("the superintendent") on or about January 21, 1997.
2. As maintenance director, Caliri, among other duties, schedules, supervises and oversees the work of all School Department custodial and maintenance personnel (including electricians, plumbers and carpenters) and of private vendors providing maintenance and repair services to the School Department. In addition, Caliri authorizes overtime work pursuant to the governing collective bargaining agreement and signs off on weekly payroll/attendance sheets for all School Department custodial and maintenance personnel.
3. In early 1997, Caliri and his wife contracted to purchase land for a new house in the Manomet section of Plymouth. In February 1997, the Caliris contracted with a builder to build the weathertight shell of the house for \$70,000. Pursuant to the contract, the Caliris were responsible for the wiring, plumbing, heating, insulation, exterior paint and all interior finish work for the house.
4. Also in early 1997, Caliri approached School Department employee Thomas Steele at work and asked if Steele would build the kitchen cabinets and countertops and bathroom vanities for the new house. Steele is a special education teacher who also performs cabinetry work in the maintenance department part-time during the school year and full-time during the summer. Caliri coordinates Steele's cabinetry work with the superintendent's office and signs off on Steele's timesheets during the summer; however, Steele's hours of work, compensation and work assignments are determined by the superintendent, not Caliri. For many years prior to 1997, Steele had privately made and sold cabinets, countertops and

vanities out of his home wood shop. By 1997, however, Steele had ceased that business activity and was instead doing cabinet work only for family and friends. According to Caliri, he was not aware that Steele had curtailed his business activities when he approached Steele to discuss the cabinet work. Caliri and Steele had a friendly work relationship but did not socialize outside of work. Steele agreed to do the work that Caliri requested for \$3,500, a price that was unilaterally set by Steele. Caliri purchased all the cabinet hardware separately. Steele built and installed Caliri's countertops, cabinets and vanities between April and November 1997. Caliri paid Steele his price for his work as agreed.

5. In early 1997, Caliri asked a School Department vendor, Williams Coal & Oil Co. ("Williams Coal & Oil") of Braintree, to furnish and install the heating system, to rough-in the air conditioning system and to furnish (except for certain fixtures purchased by Caliri) and install the plumbing in his new house. The company agreed to do the plumbing, heating and air conditioning work for Caliri. The company performed the work between April and October 1997 and charged Caliri \$9,350, a price that was unilaterally set by the company. Caliri paid Williams Coal & Oil its price for the work in several installments ending in early 1998. Around the time when Williams Coal & Oil performed the work at Caliri's new house, the company was one of several vendors providing price quotes for various plumbing and heating jobs required by the School Department. Between March and June 1997, the company was selected, based upon its price, to perform and did perform \$3,300 worth of plumbing work for the School Department under Caliri's oversight as maintenance director.

6. In early 1997, Caliri told School Department electrician Joe Broderick that he was building a new house. Caliri and Broderick had worked at the same private company for several years prior to working at the School Department and had become friends in that context. In the early 1990s, Caliri had helped Broderick by renting Broderick a three-bedroom cottage that Caliri owned on the beach in Manomet for September through May of three years at a low rent. Broderick wished to reciprocate for Caliri's prior help and offered to do the wiring of Caliri's new house.

7. Broderick wired Caliri's new house, with materials supplied by Caliri, over the course of approximately ten Saturdays during the summer and fall of 1997. Broderick's labor in wiring Caliri's new house was worth about \$3,000. This was, however, less than the value of the total benefit that Caliri had provided to Broderick when he rented him the Manomet cottage. Broderick did not charge Caliri, and Caliri did not pay Broderick anything for wiring Caliri's new house.

8. During the late spring, summer and fall of 1997, Caliri requested and received the assistance of School Department maintenance worker David Kilmurray and then School Department temporary hourly maintenance worker Ken Pignatelli with the interior and exterior painting of his new house.^{1/}

9. As of spring 1997, Kilmurray and Caliri had a friendly relationship; they occasionally socialized off the job by going with a group of School Department maintenance workers for drinks after work at the Randolph Amvets Post. Caliri and Kilmurray also had gone to the dog track together on a number of occasions, and Kilmurray had visited Caliri's home several times. In addition, Caliri had previously loaned Kilmurray \$900 without interest, which Kilmurray repaid in four months.

10. Kilmurray agreed to help Caliri and spent many weekends and several of his vacation and personal leave days during the summer and early fall of 1997 helping paint Caliri's house. Kilmurray also spent a few hours one weekend helping Caliri plant a lawn for the new house. Kilmurray did not charge Caliri, and Caliri did not offer to pay or, in fact, pay Kilmurray anything for his work at Caliri's new house.

11. As of spring 1997, Caliri and Pignatelli, who had known each other for several years, were not friends and did not socialize. Caliri had never helped Pignatelli in any private matter.

12. Pignatelli agreed to help Caliri and spent many weekends during the summer and early fall of 1997 helping paint Caliri's house. Pignatelli, who as a temporary worker did not get paid vacation days, also, at Caliri's request, took at least one day off without pay to help paint Caliri's house. Pignatelli did not charge Caliri, and Caliri did not offer to pay or, in fact, pay Pignatelli anything for his work at Caliri's new house.

13. Caliri supplied all of the paint and most of the equipment used by Kilmurray and Pignatelli. Pignatelli supplied some of his own brushes and drop cloths. Caliri and his wife did some of the painting, but the substantial majority of the painting was done by Kilmurray and Pignatelli, with Pignatelli doing significantly more painting than Kilmurray. Kilmurray's and Pignatelli's combined labor in painting Caliri's new house was worth about \$2,500 (with Pignatelli's labor being worth about \$1,500 of that total). Kilmurray's landscaping work for Caliri was worth about \$50.

14. During the summer of 1997, School Department custodian Joseph Callahan, at Caliri's invitation, went to Caliri's new house with Kilmurray and Pignatelli on at least one weekend and one of his vacation days. On one occasion, while Callahan was at Caliri's house, Callahan helped wash windows for a few hours at Caliri's request. On another occasion, also at Caliri's request, Callahan spent a few hours doing landscaping work at the house, including helping Caliri plant a large bush and rake out the top soil for the lawn. At the time, Caliri and Callahan had a friendly relationship and occasionally socialized off the job at the Randolph Amvets Post, including some events which Caliri and his wife attended with Callahan and a female friend of Caliri's wife. In addition, Callahan and Caliri's brother Wayne Caliri are close personal friends. As of the time that Callahan helped Caliri, Caliri had never helped Callahan in any private matter. Callahan's work at Caliri's new house was worth between \$60 and \$100. Callahan did not charge Caliri, and Caliri did not offer to pay or, in fact, pay Callahan anything for his work at Caliri's new house.

15. On the days that the School Department employees helped Caliri with his new house, Caliri and his wife provided them with free meals and drinks in appreciation of their help. The men also socialized with the Caliris after working on the new house, swimming at the beach and barbecuing. Additionally, on several weekends when Kilmurray painted, he brought his two young children with him, and Caliri's wife watched them (together with the Caliris' two young children) and took them to the beach while Kilmurray painted. The Caliris also invited Callahan, Pignatelli and Kilmurray to stay overnight at their cottage on the weekends that they worked at the new house. Pignatelli stayed at the Caliris' cottage several nights, Kilmurray (and his children) two or three nights, and Callahan one or two nights during the course of their work on the Caliris' new house. Finally, on Labor Day weekend, the Caliris paid for Kilmurray and his children to stay overnight at a nearby motel.^{2/}

16. During the summer of 1997, Caliri, as School Department maintenance director, signed off on weekly payroll/attendance sheets for Steele. During the summer and fall of 1997, Caliri signed off on weekly payroll/attendance sheets for Pignatelli, and on several occasions authorized overtime work for Kilmurray, Broderick and Callahan. During the period of March to December 1997, Caliri approved 145 hours of overtime for Broderick, 323 hours of overtime for Kilmurray, and 473 hours of overtime for Callahan.^{3/} Pignatelli, as a temporary worker, was not eligible for overtime. At the time, the superintendent also reviewed and approved all overtime sheets before payment was made.

17. In October 1997, when the superintendent was considering Pignatelli's appointment as a permanent employee, the superintendent sought Caliri's assessment of Pignatelli. Caliri in response gave Pignatelli his "highest praises," in part, according to Caliri, based upon feedback about Pignatelli's work that Caliri received from the principals of the school where Pignatelli had worked. The superintendent subsequently appointed Pignatelli to a permanent position.

18. At no time did Caliri disclose to his appointing authority, the superintendent, that Caliri had requested and received help from his School Department subordinates and a School Department vendor in the construction of his new home and that he was continuing to take official actions as maintenance director concerning those subordinates and that vendor.

19. As School Department maintenance director, Caliri is a municipal employee as defined in G.L. c. 268A, §1. As such, Caliri is subject to the provisions of the conflict of interest law, G.L. c. 268A.

20. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself unwarranted privileges or exemptions of substantial value which are not properly available to similarly situated individuals.

21. Receiving without charge services for which payment is normally required is a privilege. The electrical, painting, landscaping and window washing services that Broderick, Kilmurray, Pignatelli and Callahan provided to Caliri without charge were services for which Caliri would otherwise have been required to pay. Accordingly, Caliri's receipt of those free services was, in each case, a privilege within the meaning of §23.

22. The free services which Caliri received from his School Department subordinates Broderick, Kilmurray, Pignatelli and Callahan were of substantial value.^{4/}

23. The privilege of the free painting services that Caliri requested and received from Pignatelli was unwarranted because it was obtained from a subordinate who did not have a private relationship with Caliri and/or a private motive, unrelated to his subordinate-boss relationship with Caliri, significant enough to have independently motivated the provision of the free services in question.^{5/} Under such circumstances, free services from a subordinate public employee are not properly available to individuals situated similarly to Caliri, i.e., other supervising public employees or officials.^{6/}

24. Given that Caliri's private (off the job) relationship with Pignatelli was too limited to have motivated Pignatelli to help Caliri to the extent that he did, Caliri knew or had reason to know that Pignatelli was providing him with those free services, at least in substantial part, because Caliri was Pignatelli's School Department boss. This was especially true because Pignatelli was in a vulnerable and exploitable position as a temporary hourly worker, had only a very limited pre-existing private relationship with Caliri, and provided a large amount and value of free painting services to Caliri. Accordingly, by requesting and receiving Pignatelli's help with his new house, Caliri knowingly or with reason to know used his official position to obtain his subordinate's free services.

25. Therefore, by requesting and receiving Pignatelli's uncompensated help with his new house, Caliri knowingly or with reason to know used his official position to secure for himself a substantially valuable unwarranted privilege which was not properly available to similarly situated persons. In so doing, Caliri violated G.L. c. 268A, §23(b)(2).

26. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy the employee's favor in the performance of the employee's official duties, or that the employee is likely to act or fail to act as a result of kinship, rank, position or undue influence of any person or party. Section 23(b)(3) further provides that the section is not violated if the employee "has disclosed in writing to his appointing authority ... the facts which would otherwise lead to such a conclusion."

27. By requesting and receiving the paid services of Steele and Williams Coal & Oil, and by requesting and/or receiving the unpaid services of Broderick, Kilmurray, Pignatelli and Callahan in connection with the construction of his new house in 1997 and by, during the same period, in the case of the employees, assigning and supervising their work for the School Department, signing their time sheets, approving their overtime and taking other actions concerning their municipal employment, and, in the case of the vendor, overseeing its work for the School Department, Caliri knowingly or with reason to know, acted in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that Steele, Williams Coal & Oil, Broderick, Kilmurray, Pignatelli and Callahan could unduly enjoy Caliri's favor or improperly influence Caliri in his performance of his official duties. In so acting, Caliri violated G.L. c. 268A, §23(b)(3). Caliri did not make the disclosures to his appointing authority, the school superintendent, required to avoid violating §23(b)(3).^{7/}

28. Caliri's brother Wayne worked as a School Department custodian from 1986 until March 1999. From January 1997, when Caliri was appointed as maintenance director, until March 1999, Caliri supervised Wayne, who also reported to the principal of the school to which he was assigned. As part of his supervision of Wayne, Caliri assigned work to Wayne and authorized his overtime. For example, between March and December 1997, Caliri approved 469 hours of overtime for Wayne, which was one of the highest overtime totals among maintenance workers and custodians for that period. According to Caliri, the reason Wayne received so much overtime in 1997 was because Wayne was one of two custodians assigned to the recently fire-damaged Donovan School and had the right of first refusal under the applicable collective bargaining agreement for overtime assignments at the school. Caliri's assignments of overtime hours to Wayne were subject to the superintendent's review and approval.

29. Caliri's appointing authority, the superintendent, was aware when he appointed Caliri to serve as maintenance director that Caliri and Wayne were brothers and that Caliri would be responsible for supervising Wayne. Caliri, however, did not at anytime file a written disclosure to the superintendent that he was supervising Wayne, approving Wayne's overtime and taking other official actions concerning matters in which Wayne had financial interests. The superintendent, in turn, at no time made a written determination that Wayne's financial interest was not so substantial as to be deemed likely to affect the integrity of the services which the town of Randolph may expect from Caliri as maintenance director.

30. Section 19 of G.L. c. 268A prohibits a municipal employee from participating^{8/} as such in a particular matter^{9/} in which to his knowledge a member of his immediate family^{10/} has a financial interest,^{11/} except as permitted by paragraph (b) of that section.^{12/}

31. Wayne, as Caliri's brother, is a member of Caliri's immediate family.

32. In supervising Wayne as a School Department custodian, Caliri, as maintenance director, participated in many particular matters in which he knew that Wayne had a financial interest, including, for example, Caliri's numerous decisions to authorize Wayne's overtime work. In so doing, Caliri violated §19.

33. The fact that Caliri's appointing authority, the superintendent, was aware that Caliri was supervising his brother is not a defense to Caliri's violation of §19. The formal disclosure and written determination requirements of the §19(b)(1) exemption are not mere technicalities. They protect the public interest from potentially serious harm. As the Commission has stated, "The steps of the disclosure and exemption procedure ... are designed to prevent an appointing authority from making an uninformed, ill-advised or badly motivated decision." *In re Hanlon*, 1986 SEC 253, 255. Accordingly, the Commission requires that anyone seeking exemption under §19(b)(1) from the prohibitions of §19 strictly comply with provisions of §19(b)(1). *See In re Ling*, 1990 SEC 456, 458-459. Furthermore, "the primary responsibility for compliance with these provisions rests on the public employee seeking the exemption."

Hanlon, supra. The superintendent's knowledge is, however, a mitigating circumstance which the Commission has considered in determining the amount of the fine imposed for Caliri's violation of §19. *Id.*^{13/}

34. According to Caliri, he was not aware at the time of his above-described conduct that his actions violated the conflict of interest law, as he had, prior to becoming aware of the Commission's investigation of this matter, never read G.L. c 268A nor received any training concerning its requirements. Ignorance of the law is, however, not a defense to a violation of the conflict of interest law. *In re Brewer*, 1987 SEC 300, 3001 n.1; see also *Scola v. Scola*, 318 Mass. 1, 7 (1945).

In view of the foregoing violations of G.L. c. 268A by Caliri, the Commission has determined that the public interest would be served by the disposition of the matter without further enforcement proceedings, on the basis of the following terms and conditions agreed upon by Caliri:

(1) that Caliri pay to the Commission the sum of \$4,000 as a civil penalty for violating G.L. c. 268A, §§19, 23(b)(2) and 23(b)(3);

(2) that Caliri pay to the Commission the sum of \$1,500 as a civil forfeiture of the benefit he received by using his position to secure the unwarranted privilege of free services from his subordinate Pignatelli in violation of G.L. c. 268A; and

(3) that Caliri waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: March 12, 2001

^{1/}According to Caliri and Kilmurray, before Caliri's new house was ready for painting, Kilmurray told Caliri that he and Pignatelli could do the painting without charge. Thus, according to Caliri, when the house was ready for painting and he asked his subordinates for help, he was accepting that prior offer. The Commission, however, finds the evidence on this point to be contradictory and does not find that the offer was made prior to Caliri's request for help as Caliri and Kilmurray state.

^{2/}Kilmurray stated under oath that he agreed to help Caliri because of their friendly relationship and because of the opportunity his helping Caliri provided for his children to spend several weekends at the beach. Kilmurray further stated under oath that he felt he was adequately compensated for the work he performed at Caliri's new house by his children's enjoyment of the beach and by the Caliris' hospitality.

^{3/}According to Caliri, he offered maintenance workers and custodians an unusually large amount of overtime in 1997 because the School Department had eight maintenance and custodial vacancies at the time, and because the Donovan School suffered \$700,000 in damage in an April 1997 fire and needed extensive clean up and repair work. According to Caliri, all overtime was offered and assigned according to the applicable collective bargaining agreement, and no grievances were filed concerning Caliri's assignment of overtime in this period.

^{4/}The Commission construes substantial value to mean or include any item or service with a value of \$50 or more. *In re LIAM*, 1997 SEC 879, 890.

^{5/}By contrast, Broderick's free services to Caliri were not unwarranted privileges because they were independently motivated by Broderick and Caliri's private relationship including, in particular, the housing assistance that Caliri had provided to Broderick, for which Broderick's services were reciprocation. Also by contrast, Callahan's free services were not unwarranted because they were sufficiently minor to be attributable to his friendly off the job relationship with Caliri. Finally, while it is a close question, Kilmurray's free services were not unwarranted because they appear to have been attributable to his friendly off the job relationship with Caliri and to the value to Kilmurray of having his children spend several summer weekends at the beach while he helped Caliri.

⁶Public employees are prohibited by the conflict of interest law from taking private advantage of the inherently exploitable relationships they have with those persons whom they supervise or regulate in their official positions. See *In re Corson*, 1998 SEC 912; see also *In re Shay*, 1992 SEC 591.

⁷The Commission, nevertheless, does not find that Caliri was in fact unduly influenced in the performance of his official duties as maintenance director by his private dealings with Broderick, Kilmurray, Callahan or Pignatelli, or with Steele and Williams Coal & Oil, nor is the Commission aware of any evidence that the men or the company ever received any preferential treatment from Caliri in the performance of his official duties.

⁸"Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

⁹"Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

¹⁰"Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. 268A, §1(e).

¹¹"Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133, 345 N.E. 2d 888 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. See *EC-COI-84-96*.

¹²Section 19(b)(1) provides that conduct which would otherwise be a violation of 19 "shall not be a violation ... if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee."

¹³Further, the Commission is not aware of any evidence that Wayne received preferential treatment from Caliri in the performance of his official duties.